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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 JOSEPH M. ANDERSON,

8 Plaintiff,

9 vs.

10 NEVADA DEPARTMENT OF
11 CORRECTIONS et al.,

12 Defendants.

3:16-cv-00056-RCJ-VPC

ORDER

13 This is a prisoner civil rights case. Now pending before the Court is an objection to the
14 Magistrate Judge's order denying Plaintiff's motion for spoliation of evidence. (Obj., ECF No.
15 168.) For the reasons given herein, the Court overrules the objection.

16 **I. FACTS AND PROCEDURAL HISTORY**

17 Plaintiff Joseph Anderson sued Defendants in state court under 42 U.S.C. §§ 1983 and
18 1985, alleging violations of the Free Exercise Clause of the First Amendment, the Religious
19 Land Use and Institutionalized Persons Act ("RLUIPA"), and the Equal Protection Clause of the
20 Fourteenth Amendment, as well as retaliation in violation of the First Amendment, and civil
21 rights conspiracy. Following removal of the action to this Court and a subsequent amendment of
22 the Complaint, Mr. Anderson was permitted to proceed with his RLUIPA, First Amendment
23 retaliation, Equal Protection Clause, and civil rights conspiracy claims. His due process claim
24 was dismissed with prejudice. At summary judgment, the majority of Mr. Anderson's claims

1 were resolved in favor of Defendants. Accordingly, the single remaining claim in this case is for
2 First Amendment retaliation against Defendant Jethro Parks.

3 The retaliation claim revolves around a single cell search conducted on July 12, 2014.
4 Mr. Anderson alleges that Mr. Parks subjected him to an oppressive cell search because of his
5 religion, and that Parks told him such searches would stop if he changed his religion. Parks
6 denies these allegations, maintaining the search was not related to Anderson's religious beliefs or
7 practices. In fact, Parks argues that he does not have discretion to choose which cells to search,
8 but that they are selected by his shift lieutenant, and that the searches are performed randomly
9 for safety and security reasons.

10 Regarding the day in question, Parks asserts that Anderson's name was on a list of
11 inmates whose cells were to be searched that day, the list having been provided by the shift
12 lieutenant. A cell search log indicates this was the only time Parks ever searched Anderson's
13 cell. During the search, Parks confiscated multiple unauthorized items, including a bottle
14 containing an "unknown liquid." According to Parks, the bottle carried a label which was
15 secured to the bottle by tape. Because the bottle would not have had a taped-on label when
16 Anderson purchased it, Parks determined that the bottle had been "altered" in violation of AR
17 711, and therefore qualified as contraband. Anderson claims the bottle contained consecrated
18 baby oil for religious use, which administrative regulations expressly authorize him to possess.

19 Following the search, Mr. Anderson took steps to recover his confiscated property.
20 However, on July 30, 2014, he was informed by prison officials that the confiscated items could
21 not be located. In subsequent responses to discovery propounded during this litigation,
22 Defendants confirmed that the confiscated property is no longer in their possession, suggesting it
23 was either lost or discarded. On this basis, Anderson filed a motion for spoliation of evidence,
24 arguing that his religious items are essential evidence in proving his claim of First Amendment

1 retaliation, to allow him to establish that the confiscated items were in fact religious in nature
2 and not “ordinary every day hygiene items.” (Mot. Spoliation 17, ECF No. 151.)

3 A motion hearing was held on April 9, 2018, before Magistrate Judge William G. Cobb.
4 Judge Cobb gave Mr. Anderson multiple opportunities to articulate the evidentiary relevance of
5 the confiscated property with respect to his claim of First Amendment retaliation. Mr.
6 Anderson’s response was that he needed the bottle of baby oil to show that it actually contained
7 consecrated oil intended for religious use. This, he argued, would serve to establish that the
8 bottle was not altered or modified and thus complied with administrative regulations. After
9 argument by both parties, Judge Cobb denied the motion for spoliation on the basis that the
10 bottle’s actual contents are not relevant evidence of First Amendment retaliation. (Minutes, ECF
11 No. 163.) Mr. Anderson now asks the Court to set aside Judge Cobb’s ruling under Federal Rule
12 of Civil Procedure 72(a).

13 II. LEGAL STANDARDS

14 Rule 72(a) permits a district court judge to modify or set aside a magistrate judge’s non-
15 dispositive ruling that is clearly erroneous or contrary to law. FED. R. CIV. P. 72(a); *see also* D.
16 NEV. LOCAL R. IB 3-1(a). “A finding is ‘clearly erroneous’ when although there is evidence to
17 support it, the reviewing body on the entire evidence is left with the definite and firm conviction
18 that a mistake has been committed.” *Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers*
19 *Pension Tr. for S. Cal.*, 508 U.S. 602, 622 (1993). “A decision is ‘contrary to law’ if it applies an
20 incorrect legal standard or fails to consider an element of the applicable standard.” *Conant v.*
21 *McCoffey*, No. C 97-0139 FMS, 1998 WL 164946, at *2 (N.D. Cal. Mar. 16, 1998) (citing *Hunt*
22 *v. National Broadcasting Co.*, 872 F.2d 289, 292 (9th Cir. 1989)). Rule 72(a) institutes an abuse-
23 of-discretion-type standard of review, under which the reviewing court must give significant
24 deference to the initial decision, and may not simply substitute its judgment for that of the

1 deciding court. *See Grimes v. City and Cnty. of S.F.*, 951 F.2d 236, 241 (9th Cir. 1991) (citing
2 *United States v. BNS Inc.*, 858 F.2d 456, 464 (9th Cir. 1988)).

3 **III. ANALYSIS**

4 After thorough review of the motion record and case file, the Court is not convinced that
5 a mistake has been made. *See Concrete Pipe & Prod. of Cal., Inc.*, 508 U.S. at 622. Ultimately,
6 Judge Cobb denied the motion for spoliation based on Mr. Anderson's failure to demonstrate the
7 evidentiary relevance of his confiscated property:

8 [T]he subject of plaintiff's grievance relates to defendant Parks' motivation
9 behind the cell search and whether it was motivated by religious animosity
10 towards Mr. Anderson's beliefs, not whether or not the substance inside the bottle
11 was permitted . . . It is the court's opinion that the contents of the bottle, even if
one assumes is of religious nature, is irrelevant to this action . . . The court
encourages plaintiff to focus on defendant Parks' motivation for conducting the
cell search and seizing the bottle.

12 (Min. 2, ECF No. 163.) Judge Cobb's relevance finding is not clearly erroneous. For example,
13 Mr. Anderson does not assert that the label on the bottle was unaltered, which might be a basis
14 for arguing that the stated reason for confiscating the bottle was a pretext. Instead, the focus of
15 Mr. Anderson's argument related exclusively to what the bottle contained. As Judge Cobb
16 recognized, the bottle's actual contents are not probative of Mr. Parks' subjective intent in
17 confiscating it. Moreover, it does not appear Parks has ever disputed what the bottle contained;
18 rather, he asserts only that the nature of the liquid in the bottle was unknown to him, and that he
19 confiscated the bottle solely due to an alteration to its label. Thus, presenting the bottle as
20 evidence would also not serve to resolve any factual dispute.

21 Therefore, the Court cannot conclude that Judge Cobb committed clear error in denying
22 Mr. Anderson's motion for spoliation.

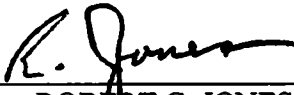
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1 **CONCLUSION**

2 IT IS HEREBY ORDERED that Plaintiff's Rule 72(a) objection (ECF No. 168) is
3 OVERRULED.

4 IT IS SO ORDERED.

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7 ROBERT C. JONES
8 United States District Judge
9 *July 24, 2018.*
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